

Chapter 5

Rules and Policies

5.1.1 Multilateral Instrument 45-102

ONTARIO SECURITIES COMMISSION NOTICE

MULTILATERAL INSTRUMENT 45-102 FORMS 45-102F1, 45-102F2 AND 45-102F3 AND COMPANION POLICY 45-102CP

RESALE OF SECURITIES

A. IMPLEMENTATION OF INSTRUMENT

The Ontario Securities Commission (the "Commission") has, under section 143 of the *Securities Act* (Ontario) (the "Act"), made Multilateral Instrument 45-102 Resale of Securities (the "Multilateral Instrument") as a rule under the Act, and has adopted Companion Policy 45-102CP (the "Companion Policy") as a policy under the Act. The Multilateral Instrument contains Forms 45-102F1, 45-102F2 and 45-102F3 (collectively, the "Forms"). The Multilateral Instrument, the Forms and the Companion Policy are collectively referred to as the "Instrument".

The Instrument is an initiative of certain members of the Canadian Securities Administrators (the "CSA"). The Multilateral Instrument has been, or is expected to be, adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and Newfoundland, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. The Companion Policy has been, or is expected to be, implemented as a policy in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut. The Multilateral Instrument, Forms and Companion Policy will not be adopted in Quebec.

The Multilateral Instrument and the material required by the Act to be delivered to the Minister of Finance were delivered on September 12, 2001. If the Minister does not reject the Multilateral Instrument or return it to the Commission for further consideration by November 12, 2001, or if the Minister approves the Multilateral Instrument, the Multilateral Instrument will come into force, pursuant to section 5.1 therein, on November 30, 2001. The Companion Policy will be adopted on the date that the Multilateral Instrument comes into force.

Concurrently with making the Multilateral Instrument, the Commission has, by regulation, revoked subsection 69(1) and section 70 of the Regulation, amended section 247 of the Regulation, and revoked and amended sections 26 and 27 and subsection 28(3) of Schedule 1 to the Regulation. See "Amendment of the Regulation" below. The regulation is

subject to the approval of the Minister of Finance and will not be effective before the Multilateral Instrument comes into force.

B. PURPOSE AND SUBSTANCE OF MULTILATERAL INSTRUMENT, FORMS AND COMPANION POLICY

1. Introduction

On September 8, 2000, certain members of the CSA published for comment the following proposed instruments (collectively, the "proposed Instrument"):

Multilateral Instrument 45-102 Resale of Securities (the "proposed Multilateral Instrument");

Form 45-102F1 Report Made under Section 2.6 of Multilateral Instrument 45-102 Resale of Securities with respect to an Issuer that has Ceased to Be a Private Company or Private Issuer ("proposed Form 45-102F1");

Form 45-102F2 Certificate under Section 2.7 of Multilateral Instrument 45-102 Resale of Securities ("proposed Form 45-102F2");

Form 45-102F3 Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities ("proposed Form 45-102F3"); and

Companion Policy 45-102CP (the "proposed Companion Policy").

Proposed Form 45-102F1, proposed Form 45-102F2 and proposed Form 45-102F3 are collectively referred to as the "proposed Forms".

The proposed Instrument was published at (2000) 23 OSCB 6238. The accompanying notice (the "2000 Notice") summarized the proposed Instrument, generally requested comment and specifically requested comment on the following two issues:

- (i) the requirement that a legended certificate representing the securities distributed under section 2.5 of the proposed Multilateral Instrument be provided to investors; and
- (ii) the provision for a four month hold period for investment grade securities.

The CSA received submissions on the proposed Instrument from nine commentators. The commentators are generally supportive of the proposed Instrument and of the CSA's initiative to harmonize and clarify the resale rules. Some commentators stated that the proposed Instrument will provide harmonization and regulatory certainty of the resale rules

which will be beneficial for maintaining the global competitiveness of the adopting jurisdictions as centres for raising capital.

Multilateral Instrument 45-102 was published on April 20, 2001 at (2001) 24 OSCB 2437. By notice dated May 18, 2001, the Commission advised that due to implementation issues that had arisen, Multilateral Instrument 45-102 had been withdrawn from the Minister of Finance. The Multilateral Instrument has now been resubmitted to the Minister of Finance.

The list of commentators on the proposed Instrument is contained in Appendix A to this Notice and a summary of their comments, together with the CSA response to the comments, are contained in Appendix B to this Notice. As a result of the CSA's consideration of the comments received on the proposed Instrument and as a result of further deliberations of the CSA, the Commission is publishing the Instrument in final form.

2. Purpose and Substance of the Instrument

The purpose and substance of the Instrument is to harmonize certain provincial and territorial resale restrictions imposed on first trades of securities initially distributed under an exemption from the prospectus requirement. The Instrument also takes a harmonized approach to distributions from a control block and to trades in securities of a non-reporting issuer over a foreign exchange or market.

For additional information concerning the background of the proposed Instrument, reference should be made to the 2000 Notice that accompanied the publication of the proposed Instrument.

C. SUMMARY OF CHANGES FROM THE PROPOSED INSTRUMENT

This section describes changes made in the Instrument from the proposed Multilateral Instrument, proposed Forms and proposed Companion Policy published for comment in September 2000, except that changes of a minor nature, or those made only for purposes of clarification or drafting reasons, are generally not discussed. The changes made are not material changes. The majority of the changes were made by the CSA in response to comments received; others were made as a result of further deliberations by the CSA.

1. Changes to the Proposed Multilateral Instrument

Section 1.1 Definitions

The definition of "approved rating" has been changed to delete the references to CBRS Inc., Duff & Phelps Credit Rating Co., Thomson Bankwatch, Inc. and their respective ratings due to the recent mergers or consolidation of operations of those rating organizations.

The definition of "current AIF" has been clarified to identify the seven types of document that qualify as a "current AIF" for the purpose of the Instrument.

The definition of "distribution date" has been amended to define the "distribution date" of an underlying security.

The definition of "NP 2-B" has been amended to clarify that "NP 2-B" means the form of that policy in place on the effective date of the Multilateral Instrument.

The definition of "private issuer" has been amended to define "private issuer" in Ontario.

Paragraph (d) of the definition of "qualifying issuer" has been amended to require only that the issuer "has not been notified by the qualified market that it does not meet the requirements to maintain" the listing or quotation standards. This amendment has been made as a result of two comments received and the CSA's further deliberations. The amendment deletes the requirement in the proposed Multilateral Instrument that an issuer must meet the listing or quotation maintenance standards in order to be a qualifying issuer.

Section 2.3 Section 2.5 Applies

Section 2.3 has been amended to clarify that the first trade, rather than any trade, of a security distributed under a prospectus exemption listed in Appendix D is subject to section 2.5 of the Multilateral Instrument.

Section 2.4 Section 2.6 Applies

Section 2.4 has been amended to clarify that the first trade, rather than any trade, of a security distributed under a prospectus exemption listed in Appendix E is subject to section 2.6 of the Multilateral Instrument.

Section 2.5 Restricted Period

The title of this section has been changed from "Hold Period" to "Restricted Period". The wording "subject to securities legislation" in the legend required to be carried on securities certificates has been amended to "unless permitted under securities legislation". This amendment has been made in response to a comment that the wording "subject to securities legislation" is vague and that similar language to the legend required by the Canadian Venture Exchange Inc. ("CDNX") should be used. Section 2.5 also clarifies that the certificate is only required to carry a legend if the distribution date is on or after the effective date of the Multilateral Instrument.

Section 2.6 Seasoning Period

Subsection 2.6(5) is new to the Multilateral Instrument. It provides for a four month seasoning period preceding the date of the trade for securities issued to employees of an issuer or its affiliate, so long as, among other conditions, the issuer became a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market. The effect of the amendment is that securities issued to employees of an issuer will be subject to the same seasoning period requirements regardless of whether the employees acquired the securities before or after the issuer's initial public offering ("IPO"). The CSA recognize that many issuers, especially in the high tech industry, issue securities to their employees or employees of their affiliates under prospectus exemptions prior to the IPO of the issuer. The CSA believe that an issuer's employees who acquired its securities prior to its IPO should not be subject to longer seasoning periods than those employees who acquired the issuer's securities after its

IPO. The addition of subsection 2.6(5) will encourage issuers to continue to use employee stock options, stock purchase plans and other similar employee incentives in the issuers' business development strategies prior to their IPOs.

First trades of securities distributed in Ontario under Commission Rule 45-503 Trades to Employees, Executives and Consultants will continue to be governed by Rule 45-503 until consequential amendments to Rule 45-503 are implemented. Once these consequential amendments are implemented, first trades of securities distributed under Rule 45-503 will be governed by the Multilateral Instrument.

Items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.8(2)5. and 2.8(3)4. In Default of Securities Legislation

Items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.8(2)5. and 2.8(3)4. have been amended to provide a less onerous resale condition on sellers. In the proposed Multilateral Instrument, if the seller is an insider or officer of the issuer, the seller must have "reasonable grounds to believe that the issuer is not in default of securities legislation". The wording in the proposed Multilateral Instrument would require the seller to have evidence to believe there has been no default. The CSA have decided that a less onerous standard would be sufficient. Accordingly, items 2.5(2)7., 2.5(3)7., 2.6(3)5. and 2.6(4)5. have been amended to require that a seller who is an insider or officer of the issuer, has "no reasonable grounds to believe that the issuer is in default of securities legislation". Items 2.8(2)5. and 2.8(3)4. have been amended to require that the seller has no reasonable grounds to believe that the issuer is in default of securities legislation.

Subsection 2.7(1) Filing of Form 45-102F1

Subsection 2.7(1) is new and provides that an issuer must file Form 45-102F1 when it ceases to be a private company or private issuer.

Section 2.8 Exemption for a Trade by a Control Person

Subsections 2.8(5), 2.8(6), 2.8(7) and 2.8(8) provide clearer instructions on the timing of Form 45-102F3 filings and on when the filing of Form 45-102F3 is no longer required for a person or company who has filed a Form 45-102F3 previously.

Section 2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus

Section 2.10 is new and reflects existing securities legislation in a number of jurisdictions. It has been added to provide an exemption from the resale rules for underlying securities issued or transferred under the terms of convertible securities, exchangeable securities or multiple convertible securities if the convertible securities, exchangeable securities or multiple convertible securities are distributed under a prospectus. This section has been added in response to two comments that the proposed Instrument does not provide an exemption for underlying securities similar to the exemptions that currently exist.

Section 2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid

Section 2.11 is new to the Multilateral Instrument and harmonizes provisions previously existing in securities legislation. It provides an exemption from the resale restrictions in section 2.6 for trades of securities issued in a securities exchange take-over bid or securities exchange issuer bid if a take-over bid circular or an issuer bid circular was filed on SEDAR. The CSA have decided to retain the existing resale exemptions for securities distributed pursuant to take-over bid circulars and issuer bid circulars. However, in some jurisdictions, an issuer becomes a reporting issuer upon the filing of a securities exchange take-over bid circular, in one jurisdiction an issuer becomes a reporting issuer upon completion of the bid and in other jurisdictions an issuer does not become a reporting issuer upon filing a securities exchange take-over bid circular. For the purpose of harmonization, the CSA have imposed a requirement in paragraph (c) of section 2.11 that a selling security holder cannot rely on this exemption unless the offeror was a reporting issuer on the date securities are first taken up under the take-over bid or issuer bid.

Section 2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular

Section 2.12 is new and has been added to provide an exemption for a trade of underlying securities issued or transferred under the terms of convertible securities, exchangeable securities or multiple convertible securities, if the convertible securities, exchangeable securities or multiple convertible securities are distributed under a securities exchange take-over bid circular or a securities exchange issuer bid circular. The CSA have decided to provide this exemption to retain the current resale exemptions under securities legislation for such underlying securities.

Part 3 Current AIF Filing Requirements

Part 3 Current AIF Filing Requirements has been restructured to clarify current AIF filing requirements for those issuers who have not filed an AIF under NI 44-101 or, prior to the effective date of NI 44-101, under NP 47.

Appendix C

The securities legislation references to British Columbia and Saskatchewan have been deleted due to the fact that British Columbia and Saskatchewan will repeal these provisions as part of their consequential amendments.

The reference to subsection 72(4) of the *Securities Act* (Ontario) has been amended to reserve the application of subsection 72(4) in Rule 45-503.

Appendix D

The securities legislation reference for Nova Scotia has been amended to change "77(1)(f)(iii) as applicable" to "subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to

purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia)". This amendment has been made to address the concern of one commentator that "77(1)(f)(iii) as applicable" is too vague. The CSA have decided to make similar clarifications with respect to the references to the legislation of Alberta, Newfoundland and Ontario in Appendix D.

References to sections 74(2)(11)(ii), 74(2)(12) and 74(2)(13) of the *Securities Act* (British Columbia) have been added to the securities legislation references for British Columbia.

Reference to clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) has been added to the securities legislation references for Saskatchewan.

Appendix E

The securities legislation reference for Nova Scotia has been amended to change "77(1)(f), as applicable" to "77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D". Similarly, the securities legislation references for Alberta, Ontario and Newfoundland have also been changed. These amendments are related to the amendments made to Appendix D referred to above. In addition, the securities legislation references for British Columbia and Saskatchewan have also been amended to reflect the changes made to Appendix D.

Appendix F

A new Appendix F has been added to refer to the employee and exercise of an option exemptions from the prospectus requirement in each jurisdiction that imposes a seasoning period on securities acquired under the employee exemption.

2. Changes in the Proposed Forms

Forms 45-102F1, 45-102F2 and 45-102F3

Item 5 of Form 45-102F1 has been restructured to provide clearer instructions on information required to be disclosed. In addition, the requirement to disclose "address" has been replaced by the requirement to disclose "municipality and jurisdiction of residence".

Item 6 of Form 45-102F1 is new and provides that the issuer must prepare and deliver to securities regulatory authorities a statement containing the required information of persons who were beneficial owners of securities of an issuer immediately before the issuer ceased to be a private company or private issuer.

An instruction has been added to Form 45-102F1 to clarify where Form 45-102F1 must be filed.

Notice - Collection and Use of Personal Information has been added to Form 45-102F1 and Form 45-102F3 to comply with the disclosure requirements for collection and use of personal information in various legislation dealing with freedom of information and protection of privacy.

Form 45-102F2 has been amended to reflect the addition of subsection 2.6(5) to the Multilateral Instrument. The issuer completes item 2 of Form 45-102F2 if it has distributed securities under an employee exemption and becomes a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market.

Under the heading "Declaration, Certificate and Undertaking" of Form 45-102F3, the term "represents" has been changed to "declares", reflecting the CSA's intention that Form 45-102F3 be a declaration of the selling security holder.

An instruction has been added to Form 45-102F3 to clarify that Form 45-102F3 is only required to be filed in jurisdictions in which the securities are being distributed, and, if applicable, with the exchange in Canada on which the securities that are the subject of the trade are listed. This instruction addresses the concern raised by a commentator that the wording in the proposed Instrument may require the filing of the Forms in all jurisdictions including jurisdictions in which no securities were distributed.

3. Changes in the Proposed Companion Policy

Section 1.1 Application

Subsection 1.1(2) has been added to state that only sections 2.1, 2.8 and 2.9 of Part 2 of the Multilateral Instrument apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

Section 1.3 Transition

Section 1.3 is new. Subsection 1.3(1) has been added to clarify that Part 2 of the Multilateral Instrument applies to first trades on or after the effective date of the Multilateral Instrument even if the securities were initially distributed prior to the effective date.

Subsection 1.3(2) points out that items 2.5(2)3. and 2.5(3)3. only impose a legending condition in connection with securities distributed on or after the effective date of the Multilateral Instrument. Similarly, subsection 1.3(3) states that Forms 45-102F1, 45-102F2 and 45-102F3 have to be filed on or after the effective date of the Multilateral Instrument.

Section 1.4 Distribution

Section 1.4 has been deleted.

Section 1.6 Reporting Issuer History

The title of this section (section 1.7 in the proposed Companion Policy) has been changed from Qualifying Issuer to Reporting Issuer History. Section 1.6 has been amended to point out that reporting issuer history in any of the jurisdictions listed in Appendix B satisfies the reporting issuer history requirements in sections 2.5, 2.6 and 2.8 of the Multilateral Instrument if the issuer is a SEDAR filer. If the issuer is not a SEDAR filer, the reporting issuer history must be in the jurisdiction of the purchaser of the securities that are the subject of the trade.

Section 1.7 Eligibility

Section 2.3 Loss of Eligibility in the proposed Companion Policy has been moved to section 1.7 and renamed Eligibility. Section 1.7 points out that the reduced restricted and seasoning periods apply if an issuer is a qualifying issuer at the distribution date even if the issuer ceases to be a qualifying issuer before the first trade.

Section 1.8 Legending of Securities

This section is new and provides an explanation of the legending requirement in the Multilateral Instrument and the CSA's rationale for the legending requirement. Several commentators have raised objections to the legending requirement and the CSA consider it helpful to explain the need for the legending requirement to achieve compliance with restricted period requirements.

Corresponding to the amendment to section 2.5 of the proposed Multilateral Instrument, section 1.8 of the Companion Policy replaces the phrase "subject to securities regulation" with "unless permitted under securities legislation". This amendment has been made in response to a comment that the phrase "subject to securities legislation" is too vague and that similar language to the CDNX legend should be used.

Section 1.9 Calculation of Restricted Periods

Section 1.9 replaces section 1.6 of the proposed Companion Policy and illustrates the calculation of restricted periods through use of an example.

Section 1.11 Employees

Section 1.11 is new and explains that subsection 2.6(5) of the Multilateral Instrument reduces the seasoning period from 12 months to four months if the securities that are the subject of the trade were distributed to employees and the issuer became a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market.

Section 1.13 Securities Exchange Take-over Bid or Issuer Bid

Section 1.13 is new and clarifies that if a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular relied upon for purposes of section 2.11 of the Multilateral Instrument must meet the prospectus disclosure standards applicable to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid. Further, the circular must be filed by the offeror on SEDAR.

Section 1.15 Filing of Forms 45-102F1, 45-102F2 and 45-102F3

Subsections 1.15(1), (2) and (3) of the Companion Policy have been amended to discuss where the Forms must be filed. Subsection 2.7(1) of the Multilateral Instrument has been added and requires that Form 45-102F1 be filed if an issuer has ceased to be a private company or private issuer. Subsection 1.15(1) of the Companion Policy comments that

Form 45-102F1 must be filed in each jurisdiction in which the issuer has ceased to be a private company or private issuer and section 2.7 of the Multilateral Instrument has been implemented. Subsection 1.15(2) of the Companion Policy has been amended to specify that Form 45-102F2 is only required to be filed in each jurisdiction in which securities have been distributed to purchasers and section 2.7 of the Multilateral Instrument has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. Further, an instruction has been added to Form 45-102F3 to provide that Form 45-102F3 is only required to be filed in jurisdictions in which the securities are distributed and with the exchange in Canada on which the securities that are the subject of the trade are listed.

The amendments to the Multilateral Instrument and to section 1.15 of the Companion Policy have been made in response to commentators' concern that the proposed Multilateral Instrument and the proposed Companion Policy seem to require the Forms to be filed in jurisdictions in which no securities were distributed. The CSA have made the amendments for clarity.

Section 1.16 Filings in the Local Jurisdiction

Section 1.16 is new and states that sections 2.10, 2.11 and 2.12 of the Multilateral Instrument provide that section 2.6 of the Multilateral Instrument does not apply to a trade on condition that a take-over bid circular, an issuer bid circular or a prospectus was filed under securities legislation of the local jurisdiction of the person or company relying upon the exemption from section 2.6 of the Multilateral Instrument.

Part 2 AIF Requirements

Part 2 AIF Requirements has been restructured in response to the clarification of the definition of "current AIF" in the Multilateral Instrument.

D. AMENDMENT OF THE REGULATION

The Commission has made the following consequential amendments to Regulation 1015 of the Revised Regulations of Ontario, 1990 (the "Regulation"), in conjunction with the making of the Multilateral Instrument as a rule. These amendments come into force at the time the Multilateral Instrument comes into force:

1. Subsection 69(1) of the Regulation is revoked.
2. Section 70 of the Regulation is revoked.
3. Section 247 of the Regulation is amended by striking out "sections 67 and 68, subsection 69(1)".
4. (1) Sections 26 and 27 of Schedule 1 to the Regulation are revoked and the following substituted:
 26. Each of the following documents must be accompanied by a fee of \$250:
 1. A report in Form 45-102F1 of Multilateral Instrument 45-102 *Resale of Securities*.

2. A notice of intention and declaration in Form 45-102F3 of Multilateral Instrument 45-102 *Resale of Securities*.
- (2) Subsection 28(3) of Schedule 1 of the Regulation is revoked and the following substituted:
 - (3) No fee is payable under subsection (2) in respect of a ruling made under section 74 of the Act that a trade that is a distribution under section 2.5 or 2.6 of Multilateral Instrument 45-102 *Resale of Securities* is not subject to section 53 of the Act.

E. TEXT OF THE MULTILATERAL INSTRUMENT, FORMS AND COMPANION POLICY

The text of the Multilateral Instrument, Forms and Companion Policy follows.

Dated: September 14, 2001

**APPENDIX A
TO NOTICE**

**LIST OF COMMENTATORS ON
MULTILATERAL INSTRUMENT 45-102
FORMS 45-102F1, 45-102F2 AND 45-102F3
COMPANION POLICY 45-102CP**

RESALE OF SECURITIES

1. Simon Romano by letter dated October 18, 2000
2. McKercher McKercher & Whitmore by letter dated October 26, 2000
3. BCE Inc. by letter dated November 14, 2000
4. The Canadian Bankers Association by letter dated December 4, 2000
5. International Northair Mines Ltd. by letter dated December 6, 2000
6. Canadian Capital Markets Association by letter dated December 8, 2000
7. The Canadian Advocacy Council of the Association for Investment Management and Research by letter dated December 8, 2000
8. Stewart McKelvey Stirling Scales by letter dated December 15, 2000*
9. Canadian Venture Exchange Inc. by letter dated January 9, 2001*

* These letters were received following the expiry of the comment period.

**APPENDIX B
TO NOTICE**

**SUMMARY OF COMMENTS RECEIVED ON
PROPOSED MULTILATERAL INSTRUMENT 45-102,
PROPOSED FORMS 45-102F1, 45-102F2 AND 45-102F3
AND PROPOSED COMPANION POLICY 45-102CP
AND
RESPONSE OF THE CANADIAN SECURITIES
ADMINISTRATORS**

A. INTRODUCTION

On September 8, 2000, certain members of the CSA published the proposed Instrument for comment. The CSA specifically requested comments on the following two issues:

- (i) the requirement that a legended certificate representing the securities distributed be provided to investors; and
- (ii) the provision for a four month hold period for investment grade securities.

The comment period for these materials expired on December 8, 2000. The CSA received nine submissions on the proposed Instrument. The CSA have considered all submissions received and thank all commentators for providing their comments. The following is a summary of the comments received, together with the CSA's responses, organized by topic.

B. COMMENTS ON ISSUES SPECIFIED BY THE CSA

1. Requirement to Legend Certificates (section 2.5 of the proposed Multilateral Instrument)

Comment (i): Four commentators do not support the requirement that securities certificates include a legend to state that subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate restricted period. Two of these commentators note that the market is increasingly relying on the book-entry form of securities and one commentator believes that the legend would not be effective for the book-entry form securities because the lack of physical certificates.

Response: The CSA note the increasing use of book-entry form securities. However, the CSA believe that the legend requirement currently is the most practical manner of providing certainty as to the applicable restricted periods and of ensuring more effective regulation of the exempt market. The CSA maintain the legend requirement in the Multilateral Instrument.

Comment (ii): Two commentators point out that the Canadian market is likely to follow the U.S. market in 2004 to move from the current practice of settling securities in 3 days after the trade ("T+3") to settling securities the day after the trade ("T+1"). These commentators believe that the transition from T+3 to T+1 would require greater automatization and less reliance on physical certificates, and that the legend requirement would be counterproductive and incompatible with the technological requirements of a T+1 system. One commentator suggests that the CSA should seek other options

to make the information required in the legend available to potential purchasers without using physical certificates.

Response: The CSA note the concerns regarding the possible transition from T+3 to T+1 clearance system. However, the transition is not likely to occur until 2004. The CSA will revisit the legend issue prior to the implementation of the T+1 system.

Comment (iii): One commentator believes that the legend requirement would cause problems on resale under the rules of The Toronto Stock Exchange Inc. (the "TSE") and other stock exchanges even after the applicable restricted periods have elapsed.

Response: The CSA do not believe that the legend requirement will cause problems since the legend may be removed by the transfer agent after the applicable restricted periods have expired. In addition, British Columbia and the CDNX have legending requirements and have not experienced any problems relating to the resale after the expiry of the applicable restricted periods.

Comment (iv): One commentator states that the language "subject to securities legislation" in the legend is vague and suggests the CSA adopt the language of the CDNX legend.

Response: The CSA have amended the legend language in the Multilateral Instrument to incorporate wording similar to the CDNX legend.

Comment (v): One commentator proposes that the legend requirement be imposed on non-qualifying issuers but not on qualifying issuers. The commentator believes that the four-month hold period for securities of qualifying issuers is too short to justify the cost and administrative burden of placing the legend.

Response: It is the CSA's view that it is necessary for clarity to impose the legend requirement on both qualifying issuers and non-qualifying issuers.

Comment (vi): One commentator states that a legend requirement is workable for share certificates, special warrants and subscription agreements.

Response: The CSA have maintained the legend requirement.

2. Four Month Restricted Periods for Investment Grade Securities

No comment was received on this issue. The CSA plan to retain the four-month restricted period for investment grade securities.

C. GENERAL COMMENTS

Comment (i): The commentators are generally very supportive of the proposed Instrument. Four commentators expressed their support of CSA's initiative to harmonize and clarify the restrictions on resale of securities previously issued under prospectus exemptions. One commentator states that the harmonization would help all market participants by reducing the cost and complexity for the distribution and resale of securities in Canada. One commentator supports the

proposed Instrument and believes that they will greatly clarify the restricted period and/or resale restrictions when securities issued in one jurisdiction under exemptions are transferred to purchasers in other jurisdictions.

Response: The CSA agree.

Comment (ii): One commentator expresses regret that Quebec is not a party to the Instrument and states that Quebec's absence would be detrimental to Ontario issuers and investors due to the close relationship between the Ontario and Quebec capital markets. The commentator encourages the Commission to seek to harmonize the resale rules with Quebec.

Response: The CSA will continue to seek to harmonize the resale rules to the extent possible.

Comment (iii): One commentator recommends that the CSA take further initiatives to harmonize rules regarding filing of documents and payment of filing fees in order to reduce the filing of duplicate documents and payment of multiple fees under different provincial legislation.

Response: The CSA acknowledge the commentator's concern and agree that harmonization would be beneficial. However, the issues regarding filing of documents and payment of fees are not within the purpose of this Instrument. These issues are currently being assessed by other project groups.

Comment (iv): One commentator believes the proposed Instrument would provide issuers with an incentive to improve their continuous disclosure.

Response: The CSA agree and believe that the shorter restricted period for qualifying issuers will encourage more issuers to file AIFs thereby improving disclosure of issuers in the marketplace.

D. SPECIFIC COMMENTS ON THE PROPOSED MULTILATERAL INSTRUMENT

1. Definition of "Private Company"

Comment: One commentator notes that the Commission has proposed to remove the private company exemption in proposed Commission Rule 45-501 Exempt Distributions which was published for comment on September 8, 2000 at (2000) 23 OSCB 6205 (the "proposed Commission Rule 45-501"). The commentator suggests that in order to avoid confusion, the term "private company" should not be used in the proposed Instrument. Alternatively, the commentator recommends that the "private company" exemption be retained in the proposed Commission Rule 45-501 so that the "private company" definition can also be retained in the proposed Instrument.

Response: The CSA believe that the issue whether to retain the private company exemption should be dealt with by the Commission in the implementation of the proposed Commission Rule 45-501. The CSA note that the "private company" exemption is currently still in effect in Ontario. Furthermore, the CSA recognize that subsequent to the removal of the private company exemption in Ontario by

proposed Commission Rule 45-501, the "private company" exemption or the "private issuer" exemption will remain in effect in other jurisdictions. In Ontario, existing private companies will continue to exist although no new private companies will be created. Accordingly, the CSA have decided to retain the term "private company" in the Instrument.

2. Definition of "Qualified Market"

Comment (i): One commentator suggests that the *Paris Bourse*, now *Euronext*, should be a "qualified market".

Response: The CSA have traditionally accepted documents from the markets listed in the definition and have not amended the definition.

Comment (ii): One commentator disagrees with the exclusion of Tier 3 issuers of CDNX from the definition of "qualified market". The commentator states that Tier 3 issuers are subject to the same continuous disclosure requirements as Tier 1 and Tier 2 issuers. The only difference is that Tier 3 issuers do not have active businesses. The commentator states that a longer hold period for a Tier 3 issuer is not justified provided that the Tier 3 issuer discloses its current state of affairs pursuant to applicable regulations.

Response: The CSA has not amended the definition of "qualified market" to include Tier 3 issuers as Tier 3 issuers do not have active businesses.

Comment (iii): One commentator expresses concern that an issuer may drop from one listing category to another listing category on a multi-tiered market such as the TSE.

Response: An issuer will remain eligible so long as it is listed on the TSE and has not been notified by the exchange that it does not meet the requirements to maintain that listing and is not designated inactive or suspended.

Comment (iv): One commentator asks why CDN is not included as a qualified market particularly if junior capital pools are included.

Response: Most issuers on CDN (now Canadian Unlisted Board or CUB) have been transferred to CDNX. CUB is a trade reporting or quotation system without listing requirements. Accordingly, the CSA have decided not to include CUB as a qualified market.

3. Definition of "Qualifying Issuer"

Comment (i): One commentator supports the adoption of the concept of "qualifying issuer" and believes the shorter restricted period for securities of qualifying issuers would make it easier for listed companies to compete for investment funding without sacrificing investor protection.

Response: The CSA confirm that one of the CSA's objectives is to shorten the restricted period for securities of qualifying issuers. The CSA also believe it is important to set eligibility standards for qualifying issuers.

Comment (ii): One commentator states that often the securities exchanges do not delist or suspend those issuers who fail to meet the listing maintenance standards. The

commentator suggests that in order to be a qualifying issuer, it should be sufficient that an issuer is listed and posted on a qualified market and it should not be required that the issuer meet the listing maintenance standards.

Response: The CSA regard the exchange listing maintenance standards as measures implemented for the protection of the market and of the investors. So long as an issuer has not been notified by an exchange or market that it no longer meets the listing maintenance standards of the securities exchange the issuer will remain a qualifying issuer. This will encourage issuers to be more diligent in maintaining their listing standards, which is beneficial to the market and to the investors.

4. Application to First Trades (sections 2.3, 2.4 and 2.11 of the proposed Multilateral Instrument, now sections 2.3, 2.4 and 2.14 of the Multilateral Instrument)

Comment: One commentator states that sections 2.3, 2.4 and 2.11 of the proposed Multilateral Instrument (now sections 2.3, 2.4 and 2.14 of the Multilateral Instrument) seem to apply to any trade, not just a first trade. The commentator believes this is excessive.

Response: The CSA agree and have amended sections 2.3, 2.4 and 2.14 to refer to first trades. Further, subsection 1.2(2) of the Companion Policy clarifies that exempt trades may be made during a restricted period or seasoning period.

5. Convertible Securities (sections 2.3 and 2.5 and Appendix D of the proposed Multilateral Instrument)

Comment: One commentator notes that there is a contradiction between section 2.3 of the proposed Multilateral Instrument and section 2.13 [sic] of Commission Rule 45-501. Section 2.16 of Commission Rule 45-501 provides an exemption from the prospectus requirement for a trade of underlying securities acquired in accordance with the terms of convertible securities if the convertible securities were distributed under a prospectus. Section 2.3 of the proposed Multilateral Instrument places a restricted period on these underlying securities. Another commentator recommends that the language should be clarified regarding the grant of an exemption for resale of underlying securities similar to the existing exemption in section 77(8) of the *Securities Act* (Nova Scotia).

Response: The CSA agree and have amended the proposed Multilateral Instrument by adding subsection 2.10 to provide an exemption from section 2.6 for underlying securities corresponding to section 2.16 of Commission Rule 45-501. The language regarding section 77(8) of the Securities Act (Nova Scotia) has been clarified.

6. Becoming a Reporting Issuer (sections 2.5, 2.6 and 2.8 of the proposed Multilateral Instrument)

Comment: One commentator welcomes the initiative of setting the commencement for the resale restricted period at the date the issuer becomes a reporting issuer in a jurisdiction listed in Appendix B. The commentator believes this will result in more certainty among issuers as to the length of the resale restricted period and will reduce the need for jurisdiction shopping.

Response: The CSA agree.

7. Filing of the Forms (subsections 2.6(3) and 2.8(4) and section 2.7 of the proposed Multilateral Instrument, now subsections 2.6(4) and 2.8(4) and section 2.7 of the Multilateral Instrument)

Comment (i): One commentator raises the question whether the Forms must be filed in all jurisdictions or only in the jurisdictions where the purchasers reside. The commentator states that there could be a constitutional issue if filings are required in a jurisdiction where the issuer has no activity or nexus.

Response: The CSA have clarified in the Multilateral Instrument and the Companion Policy that Form 45-102F3 is to be filed solely in jurisdictions in which the securities are distributed and with the exchange in Canada on which the securities that are the subject of the trade are listed. With respect to the filing of Form 45-102F1, the Companion Policy has been clarified so that filing is only required in each jurisdiction in which an issuer has ceased to be a private company or private issuer and section 2.7 of the Multilateral Instrument has been implemented. Form 45-102F2 must be filed in each jurisdiction in which securities have been distributed to purchasers and section 2.7 of the Multilateral Instrument has been implemented. Section 2.7 of the Multilateral Instrument has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

Comment (ii): One commentator suggests that if filing of the Forms is required in jurisdictions in which no purchasers reside, the filing fees should be waived in these jurisdictions.

Response: The commentator's concern has been addressed by the clarifications to the filing requirements of the Forms as discussed above.

8. Trade by Control Persons (section 2.8 of the proposed Multilateral Instrument)

Comment: One commentator notes that the CSA have introduced new requirements regarding trades by pledgees in section 2.8 of the proposed Multilateral Instrument. The commentator further notes that National 62-101 Control Block Distribution Issues ("NI 62-101") contains provisions regarding control block trades by pledgees. The commentator asks the CSA to adopt a more consistent and logical approach regarding section 2.8 of the proposed Multilateral Instrument and NI 62-101, particularly relating to the following issues:

- (a) The commentator notes that the requirement in subsection 2.8(1) of the proposed Multilateral Instrument that "if such security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution" is new and seems to change existing law.
- (b) The commentator points out that NI 62-101 still refers to Commission Rule 45-501 regarding restricted periods for control block trades by pledgees and recommends that NI 62-101 be amended;

- (c) The commentator asks the CSA to confirm that the new requirement for pledgees in section 2.8 of the proposed Multilateral Instrument does not affect the pledgees' reliance on the provisions in NI 62-101;
- (d) The commentator states that in NI 62-101, "seller" and "vendor" are construed as "pledgees", while in section 2.8 of the proposed Multilateral Instrument, "creditor" and "seller" are separate concepts. The commentator thinks that the reference to "creditor" and "seller" as different persons may cause problems in items 2.8(2)5. and 2.8(3)5. of the proposed Multilateral Instrument where the creditor must rely on the seller's knowledge as to whether the issuer is not in default of any requirement of securities legislation. Similarly, a creditor may have to rely on a seller's filing of Form 45-102F3 as required in subsection 2.8(5) of the proposed Multilateral Instrument.

Response:

- (a) *The CSA disagree and the wording in subsection 2.8(1) of the proposed Multilateral Instrument has been retained as the trade may be a subsequent resale.*
- (b) *The CSA will recommend that NI 62-101 be amended as a consequential amendment to the implementation of the Multilateral Instrument.*
- (c) *The CSA will recommend that section 2.2 of NI 62-101 regarding pledgees be deleted as it is unnecessary given subsection 2.9(3) of the Multilateral Instrument.*
- (d) *The CSA do not agree that the drafting will result in such confusion.*

9. Determining Time Periods (section 2.9 of the proposed Multilateral Instrument)

Comment: One commentator suggests that the same language in subsection 2.9(1) of the proposed Multilateral Instrument regarding amalgamating, merged or continuing corporations should be adopted in subsection 2.9(2) of the proposed Multilateral Instrument so that a merger does not restart the seasoning period for trades by control persons.

Response: *The CSA have not amended the proposed Multilateral Instrument to permit the inclusion of the period of time that the selling security holder had held the securities of one of the amalgamating, merged or continuing issuers in determining the seasoning period for securities acquired under prospectus exemptions for amalgamation, arrangement and statutory procedures because it is not currently contemplated in securities legislation of the jurisdictions implementing the Multilateral Instrument.*

10. Trades by Underwriters (section 2.10 of the proposed Multilateral Instrument, now section 2.13 of the Multilateral Instrument)

Comment: One commentator asks the CSA to clarify the restricted period for trades by underwriters referred to in section 2.10 of the proposed Multilateral Instrument (now section 2.13 of the Multilateral Instrument).

Response: *The proposed Multilateral Instrument does not change the current law on trades by underwriters. A trade of securities acquired under the exemption from the prospectus requirement set out in Appendix H is a distribution regardless how long the securities have been held.*

11. Replacing Seasoning Requirements

Comment: One commentator suggests that the CSA should replace the seasoning requirements in the Multilateral Instrument with the CDNX proposed Exchange Seed Share Resale Restriction Rules ("SSRR"). SSRR imposes various hold periods from 0 to 3 years depending on the time the securities are held and the price of the securities relative to the price at the issuer's IPO.

Response: *The CSA believe it is premature to consider the utilization of SSRR by the CSA before SSRR is finalized. The CSA will reconsider the issue if SSRR is formally adopted by CDNX.*

12. Appendix D

Comment: One commentator states that the legislation reference to "clause 77(1)(f)(iii) as applicable" for Nova Scotia is too vague and asks the CSA to clarify that reference.

Response: *Appendix D has been amended to clarify the reference to clause 77(1)(f)(iii) for Nova Scotia. Corresponding changes have been made to the Alberta, Newfoundland and Ontario references.*

E. SPECIFIC COMMENTS ON THE PROPOSED FORMS

1. Form 45-102F1

Comment: One commentator believes that it is excessive to require an issuer to certify as to beneficial ownership of its securities without a knowledge qualification.

Response: *The CSA have amended the form to provide that if, after reasonable effort, it was not possible to identify the beneficial owner, the filer is required to explain why and disclose the registered owner.*

2. Form 45-102F3

Comment (i): One commentator notes that paragraph 8 of the proposed Form 45-102F3 uses the term "sales" while the current Form 23 in Ontario uses the term "distribution". The commentator suggests that "distribution" is more flexible and it should replace "sales" in Form 45-102F3.

Response: *The CSA agree and have amended paragraph 8 of proposed Form 45-102F3 by replacing the word "sold" with "distributed".*

Comment (ii): One commentator asks the CSA to clarify the type of pre-sale activities allowed in private sales that will not be considered as "acts in furtherance of a trade".

Response: *The term "distribution" is defined in securities legislation and has been interpreted by securities commissions*

and by the courts. The CSA do not consider it necessary to expand upon the meaning of "distribution" in the Instrument.

Comment (iii): One commentator states that it would be difficult for a creditor to state when the creditor decided to sell the securities as required by paragraph 11 of proposed Form 45-102F3.

Response: The language has been deleted.

Response: The CSA do not believe it is unduly difficult for an issuer to obtain the information referred to in section 1.14 of the Companion Policy at the time of the initial distribution.

F. SPECIFIC COMMENTS ON THE PROPOSED COMPANION POLICY

1. Connecting Jurisdiction (section 1.3 of the proposed Companion Policy)

Comment: One commentator considers the connecting jurisdiction concept in subsection 1.3(1) of the proposed Companion Policy is inappropriate as it changes the current state of the law. The commentator believes the current state of the law should be maintained so that a trade is only subject to the legislation of the jurisdictions in which the purchasers reside.

Response: Section 1.3 of the proposed Companion Policy has been deleted. The CSA believe it is more appropriate to deal with this issue in proposed MI 72-101 Distributions Outside of the Local Jurisdiction. Further, see section D7 Filing of the Forms above.

2. Resale of Securities of a Non-Reporting Issuer (section 1.9 of the proposed Companion Policy, now section 1.14 of the Companion Policy)

Comment (i): One commentator suggests that section 1.9 of the proposed Companion Policy should be moved to the Multilateral Instrument.

Response: The CSA do not consider it necessary to move section 1.9 of the proposed Companion Policy (now section 1.14 of the Companion Policy) to the Multilateral Instrument. The Companion Policy is designed to provide information relating to the manner in which the provisions of the Multilateral Instrument are intended to be interpreted or applied. Section 1.14 of the Companion Policy provides guidance on how certain information required in the Multilateral Instrument is to be obtained and accordingly the CSA consider it appropriate for this section to remain in the Companion Policy.

Comment (ii): One commentator believes section 1.9 of the proposed Companion Policy (now section 1.14 of the Companion Policy) imposes an unreasonable limit on Canadian residents in reselling foreign securities over foreign markets, if such resales are deemed to be distributions in Canada.

Response: The CSA believe the restrictions are appropriate.

Comment (iii): One commentator states it is difficult for sellers to obtain information required by section 1.9 of the proposed Companion Policy (now section 1.14 of the Companion Policy) to determine the percentage of securities holding in Canada, particularly if the information required is of a historical date.

**MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

APPENDIX H

FORM 45-102F1

FORM 45-102F2

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**MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

PART 1 DEFINITIONS

1.1 Definitions - In this Instrument

"AIF" means an annual information form of an issuer;

"approved rating" means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that preceded or replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Fitch, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	baa
Standard & Poor's Corporation	BBB	A-3	BBB

"approved rating organization" means each of Dominion Bond Rating Service Limited, Fitch, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, and any of their predecessors or successors;

"control distribution" means a trade described in the provisions of securities legislation listed in Appendix A;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;

"CPC" means a capital pool company as defined in a CPC instrument and, in Manitoba, a keystone company as defined in Manitoba Securities Commission Rule 44-501 Keystone Companies;

"CPC information circular" means an information circular filed by an issuer and accepted under a CPC instrument in connection with a qualifying transaction;

"CPC instrument" means a rule or regulation of a jurisdiction, or a rule, regulation or policy of an exchange in Canada, that applies only to CPCs;

"current AIF" means

- (a) an AIF that is a current AIF filed under NI 44-101 in at least one of the jurisdictions listed in Appendix B,

- (b) an AIF that is a "Current AIF" as defined in NP 47 filed under NP 47 in at least one of the jurisdictions listed in Appendix B,
- (c) an AIF in the form required by Form 44-101F1 filed in at least one of the jurisdictions listed in Appendix B by an issuer not eligible to use NI 44-101 and containing audited financial statements for the issuer's most recently completed financial year,
- (d) an AIF that is a current AIF filed under British Columbia Instrument 45-506 or Alberta Rule 45-501,
- (e) a prospectus which has been filed in any jurisdiction that includes audited financial statements for the issuer's most recently completed financial year, other than
 - (i) a short form prospectus filed under NI 44-101,
 - (ii) a short form prospectus filed under NP 47, or
 - (iii) a prospectus filed under a CPC instrument,
- (f) a CPC information circular filed in any jurisdiction that includes
 - (i) audited financial statements for the issuer's most recently completed financial year,
 - (ii) audited financial statements for the target issuer's most recently completed financial year, and
 - (iii) a pro forma balance sheet that gives effect to the qualifying transaction accompanied by a compilation report of an auditor, and
- (g) a current annual report on Form 10-K or Form 20-F under the 1934 Act for the issuer's most recently completed financial year filed in any jurisdiction by an issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act;

"distribution date" means

- (a) in respect of a trade that is not a control distribution, the date the security that is the subject of the trade was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder,
- (b) in respect of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the selling security holder,
- (c) in respect of a trade of an underlying security that is not a control distribution, the date the

- convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder, or
- (d) in respect of a trade of an underlying security that is a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was acquired by the selling security holder;
- "exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;
- "multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;
- "NI 13-101" means National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);
- "NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Projects;
- "NI 44-101" means National Instrument 44-101 Short Form Prospectus Distributions;
- "NP 47" means National Policy Statement No. 47 Prompt Offering Qualification System;
- "NP 2-B" means National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators in the form in place on the effective date of this Instrument;
- "private company" has the meaning ascribed to that term in securities legislation;
- "private issuer" has the meaning ascribed to that term in securities legislation except in Ontario where "private issuer" means a person that
- (a) is not a reporting issuer or a mutual fund,
- (b) is an issuer all of whose issued and outstanding shares
- (i) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements
- among the issuer and the holders of its securities; and
- (ii) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any two or more joint registered holders as one beneficial owner, exclusive of persons
- (A) that are employed by the issuer or an affiliated entity of the issuer, or
- (B) that beneficially owned, directly or indirectly, shares of the issuer while employed by it or an affiliated entity of it and at all times since ceasing to be so employed have continued to beneficially own, directly or indirectly, at least one share of the issuer, and
- (c) has not distributed any securities to the public;
- "qualified market" means any of
- (a) The Toronto Stock Exchange Inc.,
- (b) Tier 1 or Tier 2 of the Canadian Venture Exchange Inc.,
- (c) Bourse de Montréal Inc.,
- (d) the American Stock Exchange,
- (e) Nasdaq National Market,
- (f) Nasdaq SmallCap Market,
- (g) the New York Stock Exchange,
- (h) the London Stock Exchange Limited, and
- (i) any predecessor or successor to any of the entities referred to in paragraphs (a) through (h);
- "qualifying issuer" means an issuer
- (a) that is a reporting issuer in a jurisdiction listed in Appendix B,
- (b) that is an electronic filer under NI 13-101,
- (c) that has a current AIF filed on SEDAR,
- (d) that
- (i) has a class of equity securities listed or quoted on a qualified market, has not been notified by the qualified market that it does not meet the requirements to maintain that listing or quotation and is not designated inactive, suspended or the equivalent, or
- (ii) has a class of securities outstanding that has an approved rating,

- (e) if it is not qualified to file a short form prospectus under NI 44-101, or prior to the effective date of NI 44-101 was not qualified to file a short form prospectus under NP 47, and has a mineral project or oil and gas producing activities, including exploration, that has filed with its current AIF, as if the current AIF were a prospectus, technical reports in accordance with NI 43-101 if the current AIF was filed after the effective date of NI 43-101, or a technical report and certificate prepared in accordance with NP 2-B,
- (f) that, if it has received a notice in writing from any regulator that its current AIF, including any technical reports, is unacceptable, has satisfied the regulator that its current AIF is acceptable, and
- (g) that, if it is a CPC, has filed a CPC information circular;

"qualifying transaction" means a transaction that, if completed, would result in the issuer no longer being a CPC;

"SEDAR" has the meaning ascribed to that term in NI 13-101; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

PART 2 FIRST TRADES

- 2.1 Application** - Except for sections 2.1, 2.8 and 2.9, this Part does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.
- 2.2 Removal of Resale Provisions** - The provisions in securities legislation listed in Appendix C do not apply.
- 2.3 Section 2.5 Applies** - If a security was distributed under any of the provisions listed in Appendix D, the first trade of that security is subject to section 2.5.
- 2.4 Section 2.6 Applies** - If a security was distributed under any of the provisions listed in Appendix E, the first trade of that security is subject to section 2.6.
- 2.5 Restricted Period**
 - (1) Unless the conditions in subsection (2) or (3) are satisfied, a trade that is specified by section 2.3 or other securities legislation to be subject to this section is a distribution.
 - (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

- 1. The issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.
- 2. At least four months have elapsed from the distribution date.
- 3. If the distribution date is on or after the effective date of this Instrument, a certificate representing the securities was issued that carried a legend stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before [insert the date that is four months and a day after the distribution date]."
- 4. The trade is not a control distribution.
- 5. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
- 6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
- 7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
 - 1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
 - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
 - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
 - 2. At least 12 months have elapsed from the distribution date.
 - 3. If the distribution date is on or after the effective date of this Instrument, a certificate representing the securities was issued that carried a legend
 - (a) if the issuer is a reporting issuer in a jurisdiction listed in Appendix B and is an electronic filer under NI 13-101 on the distribution date, stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before [insert the date that is 12 months and a day after the distribution date]."; or

- (b) if the issuer is not a reporting issuer in a jurisdiction listed in Appendix B at the distribution date, stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before the earlier of (i) the date that is 12 months and a day after the date the issuer first became a reporting issuer in any of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan, if the issuer is a SEDAR filer; and (ii) the date that is 12 months and a day after the later of (A) the distribution date, and (B) the date the issuer became a reporting issuer in the local jurisdiction of the purchaser of the securities that are the subject of the trade."

4. The trade is not a control distribution.
5. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

2.6 Seasoning Period

- (1) Unless the conditions in subsection (3), (4) or (5) are satisfied, a trade that is specified by section 2.4 or other securities legislation to be subject to this section is a distribution.
- (2) The first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection (4) are satisfied.
- (3) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:
 1. The issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B

for the four months immediately preceding the trade.

2. The trade is not a control distribution.
 3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (4) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
 - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
 - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
 2. The trade is not a control distribution.
 3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (5) Despite subsection (4), if
- (a) the selling security holder acquired the securities under any of the provisions listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to this section, and
 - (b) the issuer of the securities became a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class

of its equity securities on a qualified market,

the conditions are the issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade and the conditions in items (4)2., 3., 4. and 5.

2.7 Filing of Forms 45-102F1 and 45-102F2

(1) If an issuer ceases to be a private company or private issuer on or after the effective date of this Instrument, the issuer shall file Form 45-102F1.

(2) If

(a) an issuer, or a selling security holder in the case of a control distribution, has distributed securities under any of the provisions listed in Appendix D or E or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6,

(b) the distribution date is on or after the effective date of this Instrument, and

(c) the issuer was a qualifying issuer on the distribution date,

the issuer, or the selling security holder in the case of a control distribution, shall file Form 45-102F2 on or before the tenth day after the distribution date.

(3) If

(a) an issuer has distributed securities under any of the provisions listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6,

(b) the issuer was not a qualifying issuer on the distribution date, and

(c) the issuer becomes a qualifying issuer on or after the effective date of this Instrument by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market,

the issuer shall file Form 45-102F2.

(4) The issuer, or the selling security holder in the case of a control distribution, shall file Form 45-102F2 on SEDAR.

2.8 Exemption for a Trade by a Control Person

(1) The prospectus requirement does not apply to a control distribution, or a distribution by a lender,

pledgee, mortgagee or other encumbrancer for the purpose of liquidating a debt made in good faith by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt if the security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsections (2) or (3) are satisfied.

(2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.

2. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, has held the securities for at least four months.

3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.

4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

5. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

(3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade

(a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or

(b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.

2. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.

3. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

4. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

5. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt has held the securities for
 - (a) at least 12 months, if the securities were distributed to the selling security holder under any of the provisions listed in Appendix D or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5, and
 - (b) in all other cases, at least six months.
- (4) The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, under subsection (2) or (3) shall
 - (a) sign and file Form 45-102F3 at the times set out in subsections (6) and (7), and
 - (b) file, within three days after the completion of any trade, a report of the trade in the form required to be filed by a person or company in order to comply with the insider reporting requirements.
- (5) A person or company required to file Form 45-102F3 shall sign the form no earlier than one business day before its filing.
- (6) Subject to subsections (7) and (8), a person or company required to file Form 45-102F3 shall file the form
 - (a) at least seven days and not more than 14 days before the first trade that forms part of the distribution,
 - (b) on the 60th day after the date of filing under paragraph (a), and
 - (c) thereafter at the end of each 28 day period.
- (7) Subject to subsection (8), if a person or company has filed a Form 23 Notice of Intention to Distribute Securities or equivalent form before the effective date of this Instrument, the person or company shall file Form 45-102F3
 - (a) on the 60th day after the date of filing of the Form 23 or equivalent form, and thereafter at the end of each 28 day period, or
 - (b) on the 28th day after the date of filing of the renewal Form 23 or equivalent form, and thereafter at the end of each 28 day period, if a renewal form has been filed before the effective date of this Instrument.
- (8) A person or company is not required to file Form 45-102F3 under paragraph 6(b), 6(c), 7(a) or 7(b) if

- (a) all of the securities specified under the original form have been sold, or
- (b) a notice has been filed in the jurisdictions in which a Form 45-102F3 would otherwise have been filed, which states that the securities specified under the original form, or the unsold part, are no longer for sale.

2.9 Determining Time Periods

- (1) In determining the period of time that an issuer has been a reporting issuer for the purposes of section 2.6 or 2.8, in the case of securities distributed under any of the provisions listed in Appendix G, the period of time that one of the amalgamating, merging or continuing issuers was a reporting issuer immediately before the amalgamation, merger or continuation may be included.
- (2) In determining the period of time that a selling security holder has held a security for the purposes of section 2.5 or 2.8, if the security was acquired by the selling security holder from an affiliate of the selling security holder, the period of time that the security had been held by the affiliate before the transfer to the selling security holder may be included.
- (3) In determining the period of time that a selling security holder has held an underlying security for the purposes of section 2.8, the period of time the selling security holder has held the convertible security, exchangeable security or multiple convertible security may be included.
- (4) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held a security under item 2.8(2)2. or 2.8(3)5., the period of time the security has been held by the debtor may be included.
- (5) In determining the period of time that a lender, pledgee, mortgagee or other encumbrances has held an underlying security under item 2.8(2) or 2.8(3)(5), the period of time the convertible security, exchangeable security or multiple convertible security has been held by the debtor may be included

2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) a receipt was obtained for a prospectus qualifying the distribution of the convertible security, exchangeable security or multiple convertible security;
- (b) the trade is not a control distribution; and

- (c) the issuer of the underlying security is a reporting issuer at the time of the trade.

2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid - Section 2.6 does not apply to a trade of a security of an offeror acquired by the selling security holder upon the exchange by or for the account of the offeror with the security holders of the offeree issuer in connection with a take-over bid or issuer bid if

- (a) when the exemption from the prospectus requirement was relied upon, a securities exchange take-over bid circular or securities exchange issuer bid circular relating to the distribution of the securities was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution; and
- (c) the offeror was a reporting issuer on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid.

2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) when the exemption from the prospectus requirement was relied upon, a securities exchange take-over bid circular or a securities exchange issuer bid circular relating to the distribution of the convertible security, exchangeable security or multiple convertible security was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution;
- (c) the offeror was a reporting issuer on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid; and
- (d) the issuer of the underlying security is a reporting issuer at the time of the trade.

2.13 Trades by Underwriters - A trade by an underwriter of securities distributed under any of the provisions listed in Appendix H is a distribution.

2.14 First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption

- (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if

- (a) the issuer of the security was not a reporting issuer in any jurisdiction at the distribution date;

- (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

- (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
- (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and

- (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada;

- (2) The prospectus requirement does not apply to the first trade of an underlying security if

- (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;

- (b) the issuer of the underlying security was not a reporting issuer in any jurisdiction at the distribution date of the convertible security, exchangeable security or multiple convertible security;

- (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and

- (d) the condition in paragraph (1)(c) is satisfied.

PART 3 CURRENT AIF FILING REQUIREMENTS

3.1 Current AIF

- (1) An issuer that has not filed an AIF
 - (a) under NI 44-101, or
 - (b) prior to the effective date of NI 44-101, under NP 47

may file a current AIF under this Instrument at any time.

(2) An issuer filing a current AIF as defined in paragraphs (c), (d), (e), (f) or (g) of the definition of current AIF shall file a notice on SEDAR

(a) advising that it has filed a current AIF, and

(b) identifying the SEDAR project number under which the current AIF was filed.

PART 4 EXEMPTION

4.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 5 EFFECTIVE DATE

5.1 Effective Date - This Instrument comes into force on November 30, 2001.

**APPENDIX A
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES
CONTROL DISTRIBUTIONS**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 1(c.2) and 1(f)(iii) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX B
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

REPORTING ISSUER JURISDICTIONS

Alberta
British Columbia
Manitoba
Nova Scotia
Ontario
Quebec
Saskatchewan

**APPENDIX C
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**NON-APPLICABLE RESALE PROVISIONS
(Section 2.2)**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 109, 109.1, 110, 110.1, 110.2, 111 with respect to underwriters and 112 of the <i>Securities Act</i> (Alberta)
Nova Scotia	Subsections 77(5), 77(6), 77(7), 77(7A), 77(7B), 77(8), 77(9), 77(10)(a) and 77(11) of the <i>Securities Act</i> (Nova Scotia)
Ontario	Subsections 72(4) (except as referred to in Rule 45-503 Trades to Employees, Executives and Consultants), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the <i>Securities Act</i> (Ontario)

**APPENDIX D
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**RESTRICTED PERIOD TRADES
(Section 2.3)**

Sections 107(1)(a), (b), (c), (d), (l), (m), (p), (q), (t), (t.1), (u) and (z) of the *Securities Act* (Alberta), and section 107(1)(f)(iii) of the *Securities Act* (Alberta) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Alberta)

Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (British Columbia)

Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (British Columbia)

Sections 74(2)(11)(ii) and 74(2)(13) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), or the *Securities Rules* (British Columbia) referred to in this Appendix

Section 74(2)(12) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia) or the *Securities Rules* (British Columbia) referred to in this Appendix

Clauses 73(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Newfoundland) and subclause 73(1)(f)(iii) of the *Securities Act* (Newfoundland) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Newfoundland)

Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z), and clause 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Clauses 77(1)(a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) and (ad) of the *Securities Act* (Nova Scotia), and subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia)

Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z), and clause 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities (Nunavut)

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario)

Clauses 81(1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb) and (ee) of *The Securities Act, 1988* (Saskatchewan)

Subclauses 81(1)(f)(iii) and (iv) of *The Securities Act, 1988* (Saskatchewan) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix

Clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) if the person or company from whom the securities were acquired obtained the securities under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix

**APPENDIX E
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**SEASONING PERIOD TRADES
(Section 2.4)**

Sections 107(1)(f) if not included in Appendix D of this Instrument, (i), (j), (j.1), (k), (k.1) prior to its repeal by section 5 of the *Securities Amendment Act, 1989* (Alberta), and (n) of the *Securities Act* (Alberta)

Sections 74(2)(7) to (11), (13), (22) and (24) of the *Securities Act* (British Columbia)

Section 128(g) of the *Securities Rules* (British Columbia)

Section 74(2)(12) of the *Securities Act* (British Columbia), if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia) or the *Securities Rules* (British Columbia) referred to in this Appendix

Clauses 73(1)(f) if not included in Appendix D of this Instrument, (i), (j), (k) and (n) of the *Securities Act* (Newfoundland)

Clauses 3(e)(i) and (ii) and paragraphs 3(f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Clause 77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D of this Instrument, and clauses 77(1)(h), (i), (j), (k), (n), (v), (va), (ac), (ae) and (af) of the *Securities Act* (Nova Scotia), and clause 78(1)(a) of the *Securities Act* (Nova Scotia) as it relates to clause 41(2)(j) of the *Securities Act* (Nova Scotia) and Blanket Order No. 5A

Clauses 3(e)(i) and (ii) and paragraphs 3(f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Clauses 72(1)(f), (i), (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) that is

- (i) included in Appendix D of this Instrument,
- (ii) to an associated consultant or investor consultant as defined in Ontario Securities Commission Rule 45-503 Trades to Employees, Executives and Consultants, or
- (iii) contemplated by section 6.5 of Ontario Securities Commission Rule 45-501 Exempt Distributions

Clauses 81(1)(a.1), (e) if not included in Appendix D of this Instrument, (f) if not included in Appendix D of this Instrument, (f.1), (g), (h), (i), (i.1), (j), (k), (o), (cc) and (dd) of *The Securities Act, 1988* (Saskatchewan)

**APPENDIX F
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**EMPLOYEE TRADES
(Section 2.6)**

Sections 107(1)(f)(iii) (if the convertible security was distributed under section 107(1)(n)) and (n) of the *Securities Act* (Alberta)

Sections 74(2)(9) and 74(2)(11)(iii) (if the convertible security was distributed under section 74(2)(9) of the *Securities Act* (British Columbia) or under British Columbia Instrument 45-507 Trades to Employees, Executives and Consultants (other than to an associated consultant or investor consultant)) of the *Securities Act* (British Columbia)

Sections 73(1)(f)(iii) (if the convertible security was distributed under section 73(1)(n)) and (n) of the *Securities Act* (Newfoundland)

Paragraphs 3(e) (if the convertible security was distributed under paragraph 3(n)) and (n) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Subclause 77(1)(f)(iii) (if the convertible security was distributed under clause 77(1)(n)) and clause 77(1)(n) of the *Securities Act* (Nova Scotia) and Blanket Order No. 5A

Paragraphs 3(e) (if the convertible security was distributed under paragraph 3(n)) and (n) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Subclause 72(1)(f)(iii) (if the convertible security was distributed under clause 72(1)(n) of the *Securities Act* (Ontario) or under Ontario Securities Commission Rule 45-503 Trades to Employees, Executives and Consultants (other than to an associated consultant or investor consultant)) and clause 72(1)(n) of the *Securities Act* (Ontario)

Subclause 81(1)(f)(iii) (if the convertible security was distributed under clause 81(1)(o)) and clause 81(1)(o) of *The Securities Act, 1988* (Saskatchewan)

**APPENDIX G
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**AMALGAMATIONS OR MERGERS
(Section 2.9)**

Section 107(1)(i) of the *Securities Act* (Alberta)
Section 74(2)(8) of the *Securities Act* (British Columbia)
Clause 58(1)(b) of the *Securities Act* (Manitoba)
Clause 73(1)(i) of the *Securities Act* (Newfoundland)
Paragraph 3(g) of Blanket Order No.1 of the Registrar of Securities (Northwest Territories)
Clause 77(1)(i) of the *Securities Act* (Nova Scotia)
Paragraph 3(g) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)
Clause 72(1)(i) of the *Securities Act* (Ontario) and section 2.8 of Rule 45-501 Exempt Distributions
Clause 2(3)(k) of the *Securities Act* (Prince Edward Island)
Clause 81(1)(i) of *The Securities Act, 1988* (Saskatchewan)

**APPENDIX H
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**UNDERWRITERS
(Section 2.13)**

Section 107(1)(u.1) of the *Securities Act* (Alberta)
Section 74(2)(15) of the *Securities Act* (British Columbia)
Clause 73(1)(r) of the *Securities Act* (Newfoundland)
Paragraph 3(v) of Blanket Order No.1 of the Registrar of Securities (Northwest Territories)
Clause 77(1)(r) of the *Securities Act* (Nova Scotia)
Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)
Clause 72(1)(r) of the *Securities Act* (Ontario)
Clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan)

FORM 45-102F1

Report Made under Subsection 2.7(1) of Multilateral Instrument 45-102 Resale of Securities with respect to an Issuer that has Ceased to be a Private Company or Private Issuer

- 1. Name and address of the issuer that has ceased to be a private company or private issuer.
- 2. Date when the issuer ceased to be a private company or private issuer.
- 3. Jurisdiction of incorporation, organization or continuation of the issuer.
- 4. List, as of the time immediately before the issuer ceased to be a private company or private issuer, the number or amount and designation of the authorized and outstanding securities of each class of securities of the issuer.
- 5. Particulars of the outstanding securities.

Name of Owner of Securities and Municipality and Jurisdiction of Residence	Number or Amount	Designation of Securities
----------------------------------------------------------------------------	------------------	---------------------------

If, after reasonable effort, it was not possible to identify the beneficial owner, explain why and disclose the registered owner.

- 6. The issuer has prepared, certified and delivered to the securities regulatory authority a statement containing the full legal name of, the full residential address of, and the number or amount and designation of securities of the issuer held by, each person or company who was a beneficial owner of securities of the issuer immediately before the issuer ceased to be a private company or private issuer and, if, after reasonable effort, it was not possible to identify the beneficial owner at the time the statement was delivered, has explained why.

(Make certain the totals as to beneficial and as to registered owners given in this item reconcile, in each case, with the totals given in items 4 and 5.)

- 7. The undersigned certifies that the information given in this report is true and complete in every respect.

Date (name of issuer that has ceased to be a private company or private issuer)

By:..... (signature)

..... (official capacity)

..... (name of individual whose signature appears above)

INSTRUCTION:

If the issuer ceases to be a private company or private issuer on or after the effective date of Multilateral Instrument 45-102, file this form with the securities regulatory authority in each jurisdiction in which the issuer has ceased to be a private company or private issuer and section 2.7 of Multilateral Instrument 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

Notice - Collection and Use of Personal Information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities set out below for the purposes of the administration and enforcement of the securities legislation in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. All of the information required under this form, except for the information contained in the statement required under item 6, is made available to the public pursuant to Multilateral Instrument 45-102 and the securities legislation in each of the jurisdictions indicated above. If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdiction(s) in which the form is filed, at the address(es) set out below.

Alberta Securities Commission

4th Floor, 300 - 4th Avenue SW
Calgary, AB T2P 3C4
Attention: Information Officer
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C. V7Y 1L2
Attention: Manager, Financial and Insider Reporting
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)
Facsimile: (604) 899-6506

Securities Commission of Newfoundland

P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's NFLD A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

**Department of Justice, Northwest Territories
Legal Registries**

P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Director, Legal Registries
Telephone: (867) 873-7490
Facsimile: (867) 873-0243

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Attention: Corporate Finance
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

**Department of Justice, Nunavut
Legal Registries Division**

P.O. Box 1000 - Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Director, Legal Registries Division
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8200
Facsimile: (416) 593-8177

Saskatchewan Securities Commission

800 - 1920 Broad Street
Regina, SK S4P 3V7
Attention: Deputy Director, Legal
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

FORM 45-102F2

**Certificate under Subsection 2.7(2) or (3) of
Multilateral Instrument 45-102 Resale of Securities**

Complete 1. or 2.

1. *[Name of Issuer or Selling Security Holder]* has distributed securities under a provision listed in Appendix D or E to Multilateral Instrument 45-102 or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of Multilateral Instrument 45-102 and hereby certifies that in respect of a distribution on *[date]* of *[amount or number and type of securities]* of *[Name of Issuer]*, *[Name of Issuer]* was a qualifying issuer within the meaning of Multilateral Instrument 45-102 Resale of Securities at the distribution date.

2. *[Name of Issuer]* has distributed securities under a provision listed in Appendix F to Multilateral Instrument 45-102 or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6 of Multilateral Instrument 45-102 and hereby certifies that in respect of a distribution on *[date]* of *[amount or number and type of securities]* of *[Name of Issuer]*, *[Name of Issuer]* became after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B to Multilateral Instrument 45-102 and listing or quoting a class of its equity securities on a qualified market, and now is, a qualifying issuer within the meaning of Multilateral Instrument 45-102.

DATED at _____ this ____ day of _____, 2__.

[Name of Issuer or Selling Security Holder]

By: _____
[type name]
[title]

INSTRUCTIONS:

1. If the distribution date is on or after the effective date of Multilateral Instrument 45-102 and the issuer or selling security holder has completed 1. above, file this form on or before the tenth day after the distribution date with the securities regulatory authority in each jurisdiction in which a purchaser of the securities is located and section 2.7 of Multilateral Instrument 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

2. If the issuer has completed 2. above, file this form with the securities regulatory authority in each jurisdiction in which a purchaser of the securities is located and section 2.7 of Multilateral Instrument 45-102 has been implemented.

FORM 45-102F3

Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities

- 1. Name and address of reporting issuer
2. Date and jurisdictions where issuer became a reporting issuer
Date Jurisdiction
3. Name and address of the selling security holder
4. State whether the selling security holder is an insider or officer of the issuer. (if an officer state title).
5. Amount or number and designation of securities of the issuer beneficially owned, directly or indirectly, by the selling security holder.
6. Amount or number and designation of securities of the issuer proposed to be sold by the selling security holder.
7. State, to the extent known to the selling security holder, the following particulars about the control position of the issuer: name(s), securities of the issuer held, offices or positions with the issuer or selling security holder and any other material particular regarding such control position.
8. State whether the securities will be distributed privately or on an exchange or a market (state name of exchange or market).
9. Proposed date of sale or date of commencement of sale.
10. If the selling security holder is a lender, pledgee, mortgagee or other encumbrancer selling securities distributed under an exemption in securities legislation from the prospectus requirement for a trade to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith, state the date and amount of the loan, pledge, mortgage or other encumbrance, reasons for liquidating the debt and the circumstances of default.
11. State the date that the selling security holder or lender, pledgee, mortgagee or other encumbrancer acquired the securities.
12. If this Form is not an initial filing, provide the following information:
(a) date of filing of the initial Form 45-102F3
(b) date of the most recently filed renewal Form 45-102F3
(c) number of securities proposed to be sold as stated in the initial Form 45-102F3
(d) number of securities sold from the date of the initial Form 45-102F3 to the date of this renewal Form 45-102F3
(e) number of securities proposed to be sold, as stated in the initial Form 45-102F3, that are no longer for sale
(f) number of securities remaining for sale

Declaration, Certificate and Undertaking

The selling security holder for whose account the securities are to be sold, and to which this certificate relates, hereby:

- (1) declares that the selling security holder has no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed;
(2) declares that to the best of the selling security holder's information and belief:
(a) no unusual effort has been made to prepare the market or to create a demand for the securities to be sold and no extraordinary commission or other consideration has been paid in respect of such trade,

Rules and Policies

- (b) the transaction to which this notice of intention and declaration relate is an arm's length transaction made in good faith, and
- (c) the securities have been held for the period of time required under section 2.8 of Multilateral Instrument 45-102 Resale of Securities and the other conditions of the applicable subsection of that section have been met;
- (3) undertakes that no unusual effort will be made to prepare the market or to create a demand for the securities to be sold and no extraordinary commission or other consideration will be paid in respect of such trade;
- (4) undertakes that this Form will be renewed and filed on the 60th day after the date of filing this Form and thereafter at the end of each 28 day period; and
- (5) certifies that the information given in the answers to the questions in this Form are true.

Date
(name of selling security holder)

By:.....
(signature of selling security holder, and if a company, signature of authorised signatory)

.....
(name and office of authorised signatory)

INSTRUCTION:

File this form with the securities regulatory authority in each jurisdiction in which the securities are being distributed and with the exchange in Canada on which the securities that are the subject of the distribution are listed.

Notice - Collection and Use of Personal Information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities set out below for the purposes of the administration and enforcement of the securities legislation in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. All of the information required under this form is made available to the public pursuant to Multilateral Instrument 45-102 and the securities legislation in each of the jurisdictions indicated above. If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdiction(s) in which the form is filed, at the address(es) set out below.

Alberta Securities Commission

4th Floor, 300 - 4th Avenue SW
Calgary, AB T2P 3C4
Attention: Information Officer
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C. V7Y 1L2
Attention: Manager, Financial and Insider Reporting
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)
Facsimile: (604) 899-6506

Securities Commission of Newfoundland

P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's NFLD A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Department of Justice, Northwest Territories

Legal Registries
P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Director, Legal Registries
Telephone: (867) 873-7490
Facsimile: (867) 873-0243

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Attention: Corporate Finance
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Department of Justice, Nunavut

Legal Registries Division
P.O. Box 1000 - Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Director, Legal Registries Division
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Administrative Assistant to the Director of Corporate
Finance
Telephone: (416) 593-8200
Facsimile: (416) 593-8177

Saskatchewan Securities Commission

800 - 1920 Broad Street
Regina, SK S4P 3V7
Attention: Deputy Director, Legal
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

**COMPANION POLICY 45-102CP
TO MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

PART 1 APPLICATION

1.1 Application

- (1) Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Quebec.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of MI 45-102 does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

1.2 Purpose

- (1) MI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a seasoning period and that a restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a seasoning period. If the issuer is a qualifying issuer, MI 45-102 reduces the restricted period and seasoning period. MI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

1.3 Transition

- (1) Part 2 of MI 45-102 applies to first trades of securities made on or after the effective date of this Instrument, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to the effective date of this Instrument. As a result, in determining whether the restricted period in section 2.5 or 2.8 of MI 45-102 or the seasoning period in subsection 2.6(3) or (4) or subsection 2.8(2) or (3) of MI 45-102 has expired, a seller making a first trade must determine whether the issuer was a qualifying issuer at the date the security that is the subject of the trade was distributed or, in the

case of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the control person selling the security. In the case of a trade of an underlying security, the seller must determine whether the issuer of the underlying security was a qualifying issuer at the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed.

(2) Items 2.5(2)3. and 2.5(3)3. of MI 45-102 impose a condition that if the security that is the subject of the trade was distributed on or after the effective date of MI 45-102, the certificate representing the securities must carry a legend disclosing the resale restriction. Certificates representing securities distributed prior to the effective date of MI 45-102 do not have to be legended under MI 45-102.

(3) Form 45-102F1 is required to be filed under subsection 2.7(1) of MI 45-102 if an issuer ceases to be a private company or a private issuer on or after the effective date of MI 45-102. Similarly, Form 45-102F2 is filed under subsection 2.7(2) of MI 45-102 if the issuer of the securities is a qualifying issuer and the distribution date is on or after the effective date of MI 45-102. Form 45-102F2 is filed under subsection 2.7(3) of MI 45-102 if the issuer becomes a qualifying issuer in certain circumstances on or after the effective date of MI 45-102.

1.4 Open System Jurisdictions - Sections 2.5 and 2.6 of MI 45-102 do not apply in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.

1.5 Example of Application of Section 2.5 - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to MI 45-102, section 2.3 of MI 45-102 applies and the first trade of the securities is subject to section 2.5 of MI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four or 12 month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in subsection 2.5(2) or (3) of MI 45-102 are satisfied.

1.6 Reporting Issuer History - If an issuer is a SEDAR filer, reporting issuer history in any of the jurisdictions listed in Appendix B will satisfy the reporting issuer history requirements in sections 2.5, 2.6 and 2.8 of MI 45-102. If the issuer is not a SEDAR filer, the

reporting issuer history must be in the jurisdiction of the purchaser of the securities that are the subject of the trade.

1.7 Eligibility - Securities that were distributed when an issuer had a current AIF and met the other eligibility requirements of a qualifying issuer may be sold in accordance with subsection 2.5(2) or 2.6(3) of MI 45-102, even if the issuer is no longer a qualifying issuer at the time of the trade. However, if the issuer subsequently distributes securities at a time when it is not a qualifying issuer, purchasers of those securities may not rely upon the reduced restricted period or seasoning period in subsection 2.5(2) or 2.6(3) of MI 45-102.

1.8 Legending of Securities - Items 2.5(2)3. and 2.5(3)3. of MI 45-102 require that, for securities distributed under any of the provisions listed in Appendix D to MI 45-102 or another prospectus exemption subject to the resale restrictions in section 2.5 of MI 45-102, if the distribution date is on or after the effective date of MI 45-102 a certificate representing the securities must have been issued that carried a legend stating that, unless permitted under securities legislation, the holder of the securities shall not trade the securities before the expiry of the applicable restricted period. Placing a restricted period legend on a share certificate is the most practical manner of providing certainty as to the applicable restricted period and of ensuring more effective regulation of the exempt market in the closed system jurisdictions.

1.9 Calculation of Restricted Periods - The restricted periods in items 2.5(2)2. and 2.5(3)2. of MI 45-102 are calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

In the case of a trade that is a control distribution, the restricted periods in items 2.8(2)2. and 2.8(3)5. of MI 45-102 are calculated from the distribution date, that is, the date the securities were acquired by the control person that is selling the securities.

1.10 Underlying Securities - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security.

1.11 Employees - Section 2.6 of MI 45-102 provides that the first trade of securities distributed under an

exemption from the prospectus requirement for employees is a distribution unless certain conditions are met. If the issuer is a qualifying issuer at the distribution date, the conditions include a seasoning period of four months. If the issuer is not a qualifying issuer at the distribution date, the seasoning period is 12 months. However, if the securities were distributed under an employee exemption or exercise of an option exemption at a time when the issuer was not a qualifying issuer and the issuer of the securities subsequently becomes a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period.

1.12 Control Block Distributions - In addition to the provisions of MI 45-102, in particular section 2.8, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities that is a control block distribution by an institutional investor.

1.13 Securities Exchange Take-over Bid or Issuer Bid - Section 2.11 of MI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid in circumstances in which, among other things, a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. In the view of the securities regulatory authority, if a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid in order for the exemption in section 2.11 to be available. If a take-over bid circular or issuer bid circular is prepared in connection with a formal bid, the circular must be filed under the take-over bid or issuer bid requirements of securities legislation. If the circular is prepared in connection with an exempt bid, the circular must be filed by the offeror on SEDAR.

1.14 Resales of Securities of a Non-Reporting Issuer

- (1) For the purposes of section 2.14 of MI 45-102, it is the view of the securities regulatory authority that, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or indirectly that are residents of Canada, an issuer should use reasonable efforts to
 - (a) determine securities held of record by a broker, dealer, bank, trust company or

nominee for any of them for the accounts of customers resident in Canada;

- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
- (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

- (2) Lists of beneficial owners of securities maintained by intermediaries pursuant to SEC Rule 14a-13 under the 1934 Act or other securities law analogous to proposed National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer may be useful in determining the percentages referred to in subsection (1).

1.15 Filing of Forms 45-102F1, 45-102F2 and 45-102F3

- (1) Subsection 2.6(2) of MI 45-102 provides that the first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection 2.6(4) are satisfied. Subsection 2.7(1) of MI 45-102 requires an issuer to file Form 45-102F1 if the issuer ceases to be a private company or private issuer on or after the effective date of MI 45-102. Form 45-102F1 must be filed in each jurisdiction in which the issuer has ceased to be a private company or private issuer and section 2.7 of MI 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Nova Scotia, Nunavut, Ontario and Saskatchewan.
- (2) Subsection 2.7(2) of MI 45-102 provides that if an issuer, or a selling security holder in the case of a control distribution, has distributed securities under a provision listed in Appendix D or E or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of MI 45-102, Form 45-102F2 must be filed on or before the tenth day after the distribution date if the issuer is a qualifying issuer. However, if an issuer has distributed securities under a provision listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6 of MI 45-102, and the issuer becomes a qualifying issuer after the distribution date by filing a prospectus and listing or quoting equity securities on a qualified market, the issuer must file Form 45-102F2 even though the issuer was not a qualifying issuer at the distribution date.

Form 45-102F2 must be filed in the jurisdictions of the purchasers of the securities in which section 2.7 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. Form 45-102F2 should be filed on SEDAR under the issuer's profile under "Continuous Disclosure - SHAIIF - Other" until the SEDAR filer manual is updated to include MI 45-102 filings. Purchasers of securities will be able to determine whether the applicable restricted period or seasoning period is four months or 12 months from a review of SEDAR filings.

- (3) Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in subsection (2) or (3) of section 2.8 are met. Subsection 2.8(4) requires a person or company selling securities under subsection 2.8(2) or (3) of MI 45-102 to file Form 45-102F3. Form 45-102F3 must be filed whether the distribution date is before or after the effective date of MI 45-102.

1.16 Filings in the Local Jurisdiction - Sections 2.10, 2.11 and 2.12 of MI 45-102 state that section 2.6 of MI 45-102 does not apply to a trade in an underlying security if the convertible security, exchangeable security or multiple convertible security is qualified by a prospectus, a trade of a security issued in connection with a take-over bid or issuer bid and a trade in an underlying security if the convertible security, exchangeable security or multiple convertible security is qualified by a securities exchange take-over bid circular or issuer bid circular, respectively. Each of the exemptions from section 2.6 is subject to a condition that a take-over bid circular, an issuer bid circular or a prospectus was filed under securities legislation of the local jurisdiction of the person or company relying upon the exemption from section 2.6. Similarly, the exemptions in sections 2.10 and 2.12 of MI 45-102 require that the issuer of the underlying security be a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of MI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid.

PART 2 AIF REQUIREMENTS

2.1 Filing of Current AIF - Issuers that want to enable their security holders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF may file a current AIF at any time. An issuer filing a current AIF for the purposes of MI 45-102 should file the notice and the current AIF, if not already filed, under "Continuous Disclosure - SHAIIF" on SEDAR selecting the appropriate filing subtype/document type (i.e. either an AIF, amended

AIF or notice) until the SEDAR filer manual is updated to include MI 45-102 filings. A filer that elects to use a current AIF that has previously been filed on SEDAR is not required to refile the document for the purposes of MI 45-102.

2.2 Most Recent Financial Year - Issuers wishing to file a current AIF before they have filed their audited financial statements for the most recently completed financial year may include the audited financial statements for the financial year preceding the most recently completed financial year. For example, an issuer with a December 31 financial year end could continue to use a current AIF containing or incorporating by reference audited annual financial statements for the year ended December 31, 2000 during the first 139 days of 2002, until such time as annual audited financial statements for the year ended December 31, 2001 have been prepared and filed in accordance with securities legislation.

2.3 Review of Current AIF - An issuer's current AIF may be reviewed at any time and, as a result of this review, changes may need to be made to the current AIF. If an issuer is advised by any regulator that its current AIF does not comply with securities legislation, any of a wide range of compliance actions may be taken by the securities regulatory authorities, from requiring the next AIF to be filed correctly, or a clarifying press release to be issued, to more serious actions such as issuing a cease trade order against the issuer's securities, or initiating appropriate enforcement proceedings against the issuer and its directors and officers.

2.4 Review before Distribution - If the current AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its current AIF is unacceptable, an issuer will not be a qualifying issuer at the distribution date unless the issuer has made the necessary changes to the current AIF. Security holders that acquire securities under the distribution will not be able to take advantage of subsection 2.5(2), 2.6(3) or 2.8(2) of MI 45-102.

2.5 Review after Distribution - If the current AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its current AIF is unacceptable, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsection 2.5(2), 2.6(3) or 2.8(2) of MI 45-102 if the other conditions in the relevant subsection are met.

PART 3 FEES

3.1 Fees - An issuer filing a current AIF under section 3.1 of MI 45-102 must pay the filing fees for the AIF required by securities legislation, unless the current AIF is in the form of a prospectus for which the regulator has issued a receipt.